



DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL COORDINATOR
450 110th Ave NE
BELLEVUE, WA 98009-9012

DETERMINATION OF NON-SIGNIFICANCE

PROPONENT: Trisna Tanus, Development Services Department

LOCATION OF PROPOSAL: City-Wide

DESCRIPTION OF PROPOSAL: Amendments to the Land Use Code to modify the regulations limiting locations and quantity of recreational marijuana retailers and prohibiting medical marijuana cooperatives and marijuana research uses. These regulations will replace interim regulations adopted by Ordinance Nos. 6286 and 6296.

FILE NUMBERS: 16-139240-AD

PLANNER: Reilly Pittman

The Environmental Coordinator of the City of Bellevue has determined that this proposal does not have a probable significant adverse impact upon the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030(2)(C). This decision was made after the Bellevue Environmental Coordinator reviewed the completed environmental checklist and information filed with the Land Use Division of the Development Services Department. This information is available to the public on request.

- ☐ There is no comment period for this DNS. There is a 14-day appeal period. Only persons who submitted written comments before the DNS was issued may appeal the decision. A written appeal must be filed in the City Clerk's office by 5:00 p.m. on _____.
- ☒ This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS. There is a 14-day appeal period. Only persons who submitted written comments before the DNS was issued may appeal the decision. A written appeal must be filed in the City Clerk's Office by 5 p.m. on **9/22/2016**
- ☐ This DNS is issued under WAC 197-11-340(2) and is subject to a 14-day comment period from the date below. Comments must be submitted by 5 p.m. on _____. This DNS is also subject to appeal. A written appeal must be filed in the City Clerk's Office by 5:00 p.m. on _____.

This DNS may be withdrawn at any time if the proposal is modified so as to have significant adverse environmental impacts; if there is significant new information indicating a proposals probable significant adverse environmental impacts (unless a non-exempt license has been issued if the proposal is a private project); or if the DNS was procured by misrepresentation or lack of material disclosure.

Heidi M. Boren

Environmental Coordinator

9/8/2016

Date

OTHERS TO RECEIVE THIS DOCUMENT:

- ☐ State Department of Fish and Wildlife / Stewart.Reinbold@dfw.gov
- ☐ State Department of Ecology, Shoreline Planner N.W. Region / Jobu461@ecy.wa.gov; sepaunit@ecy.wa.gov
- ☐ Army Corps of Engineers Susan.M.Powell@nws02.usace.army.mil
- ☐ Attorney General ecyolyef@atg.wa.gov
- ☐ Muckleshoot Indian Tribe Karen.Walter@muckleshoot.nsn.us; Fisheries.fileroom@muckleshoot.nsn.us

**CITY OF BELLEVUE
ENVIRONMENTAL CHECKLIST
(Integrated SEPA/GMA Process)**

A. BACKGROUND INFORMATION

PROPOSAL TITLE: Land Use Code Amendment establishing permanent regulations limiting the locations and quantity of recreational marijuana retailers and prohibiting medical marijuana cooperatives and marijuana research uses. The permanent regulations will replace interim regulations adopted by Ordinance Nos. 6286 and 6296. File No. 16-139240-AD.

PROPERTY OWNERS' NAME: N/A; applies City-wide

PROPOSAL LOCATION: City-wide

PROPONENT'S NAME: City of Bellevue, Development Services Department

CONTACT PERSON'S NAME: Trisna Tanus, Legal Planner

CONTACT PERSON'S ADDRESS: Development Services Department
City of Bellevue
P.O. Box 90012
Bellevue, WA 98009-9012

CONTACT PERSON'S PHONE: 425-452-2970

BRIEF DESCRIPTION OF THE PROPOSAL'S SCOPE AND NATURE:

1. **General description:** Land Use Code Amendment (LUCA) to establish permanent regulations limiting the locations and quantity of recreational marijuana retailers and prohibiting medical marijuana cooperatives and marijuana research uses. The permanent regulations will replace interim regulations adopted by Ordinance Nos. 6286 and 6296. This LUCA will prohibit marijuana retailers from locating within 100 feet of single-family and multi-family land use districts (R-1 through R-30) and limit the number of retailers to one marijuana retailer within each of these subareas: Bel-Red, Crossroads, Downtown, Eastgate, Wilburton, and Factoria. This LUCA will also prohibit medical marijuana cooperatives and marijuana research uses in the City of Bellevue. This LUCA will amend sections 20.10.440, 20.25A.015, 20.20.535, and 20.25D.070 of the Bellevue Land Use Code.
2. **Site acreage:** Applies city-wide

3. **Number of dwelling units/buildings to be demolished:** N/A
4. **Number of dwelling units/buildings to be constructed:** N/A
5. **Square footage of buildings to be demolished:** N/A
6. **Square footage of buildings to be constructed:** N/A
7. **Quantity of earth movement (in cubic yards):** N/A
8. **Proposed land use:** This LUCA will regulate recreational marijuana retailers to prohibit any location within 100 feet of single-family and multi-family land use districts (R-1 through R-30) and limit recreational marijuana retailers to no more than one retailer within each of the subareas of Bel-Red, Crossroads, Downtown, Eastgate, Wilburton, and Factoria. Additionally, this LUCA will prohibit medical marijuana cooperatives and marijuana research uses in the City of Bellevue.
9. **Design features, including building height, number of stories and proposed exterior materials:** The proposal will not change any Land Use Code requirements pertaining to building size, height, design, appearance, location on property, or other regulation affecting observable physical attributes of existing or proposed structures.
10. **Other:** N/A

Proposed timing or schedule (including phasing, if applicable): Final action on the LUCA by the City Council is expected to occur in October 2016.

Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. Yes. It is expected that recreational marijuana retailers will apply for tenant improvement permits to build-out, remodel/improve, or relocate their operations over time.

List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. The Washington State Liquor Control Board has prepared an environmental checklist and issued a determination of non-significance for recreational marijuana program. The following documents are incorporated by reference and copies are provided with this checklist:

1. Washington State Liquor Control Board: Environmental Checklist for Proposed rulemaking for WAC 314-55, Marijuana Licenses, Application process, Requirements, and Reporting (June 3, 2013).
2. Michael O'Hare, et. al., BOTEK Analysis, University of California, Berkeley: *Environmental Risks and Opportunities in Cannabis Cultivation*, (BOTEK Analysis Corp., 1-502 Project #430-5d, Final (June 28, 2013).
3. Washington State Liquor Control Board: Determination of Nonsignificance (July 12, 2013).
4. Michael O'Hare, et. al., BOTEK Analysis, University of California, Berkeley: *Environmental Risks and Opportunities in Cannabis Cultivation*, (BOTEK Analysis Corp., Final Revised (September 7, 2013).

5. Revised SEPA Determination of Nonsignificance (DNS) and Addendum to Environmental Checklist (September 26, 2013).

Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. List dates applied for and file numbers, if known. Some of the recreational marijuana retail businesses in Bellevue have applied for medical marijuana endorsements with the State's Liquor and Cannabis Board (LCB), which, if granted, will allow these businesses to sell medical marijuana in the City. However, no applications for medical marijuana cooperatives or marijuana research are pending in the City. There are no applications pending with the City for recreational marijuana retail operations that would be affected by this LUCA.

List any government approvals or permits that will be needed for your proposal, if known. If permits have been applied for, list application date and file numbers, if known. The City Council must adopt an ordinance implementing the new LUCA. The Council-adopted ordinance will be subject to the disapproval jurisdiction of the East Bellevue Community Council.

B. ENVIRONMENTAL ELEMENTS

No discussion of the individual Environmental Elements is required for GMA actions per WAC 197-11-235.3.b.

C. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (do not use this sheet for project actions)

SUMMARY

Project Summary: This LUCA will regulate recreational marijuana retailers to prohibit locating within 100 feet of single-family and multi-family land use districts (R-1 through R-30) and limit recreational marijuana retailers to no more than one retailer within each of the subareas of Bel-Red, Crossroads, Downtown, Eastgate, Wilburton, and Factoria. Additionally, the LUCA will prohibit medical marijuana cooperatives and marijuana research uses in the City of Bellevue.

Environmental Summary per WAC 197-11-235(3)(b):

State the proposal's objectives: The objective of the proposal is to establish permanent regulations that prohibit recreational marijuana retailers from locating within 100 feet of single-family and multi-family land use districts (R-1 through R-30) and limit recreational marijuana retailers to no more than one retailer within each of the subareas of Bel-Red, Crossroads, Downtown, Eastgate, Wilburton, and Factoria. Additionally, the LUCA will prohibit medical marijuana cooperatives and marijuana research uses in the City of Bellevue.

Specify the purpose and need to which the proposal is responding: At the November 6, 2012, General Election, Washington voters approved Initiative 502 (I-502) legalizing the possession of limited amounts of marijuana. I-502 became effective on December 6, 2012, and is codified into Chapter 69.50 RCW, the state Uniformed Controlled Substances Act.

In general I-502:

- Legalizes the use of marijuana by people 21 years and older. Adults may possess up to 1 ounce of marijuana, 16 ounces of marijuana-infused product in solid form, and 72 ounces of marijuana-infused product in liquid form;
- Specifies that only state-licensed marijuana production, processing, and sale of marijuana are permitted;
- Requires licensed facilities to be at least 1,000 feet from schools, public playgrounds, recreation centers, state-licensed day cares, public parks, public transit centers, libraries, and arcades¹; and
- Limits signage to a maximum of one that is no larger than 11 square feet in area.

Council adopted planning principles on December 2, 2012 to guide development of marijuana uses in Bellevue:

1. Bellevue Appropriate. Bellevue will establish appropriate land use zones for recreational marijuana producers, processors, and retailers (“recreational marijuana uses”). To the extent permitted, Bellevue will establish performance standards consistent with applicable provisions of Chapter 69.50 RCW and Chapter 314-55 WAC, now or as hereafter amended, that ensure these business represent the community values and goals set forth in the City’s Comprehensive Plan.
2. Neighborhood Character is Protected. Recreational marijuana uses shall not be located in residential land use districts. Recreational marijuana uses shall be separated by 1,000 feet from elementary or secondary schools (public or private), playgrounds, recreation center or facility; child care center; public park; public transit center; library; and game arcade where admission is not restricted to persons age twenty-one or older, or a medical cannabis collective garden. Recreational marijuana use shall use appropriate ventilation to ensure abutting uses or properties are not impacted by odor.
3. Security Measures are Required. Recreational marijuana uses must have sufficient security measures to protect the public. Recreational marijuana uses must conform to State requirements for security and secure usable marijuana consistent with State pharmacy requirements for securing controlled substances.
4. Regulations are Specific and Understandable. The permanent regulations should be specific about the requirements to locate and operate recreational marijuana uses so that qualified licensees understand what is expected under the regulation.
5. Administration and Enforcement is Straightforward. Ensure regulations are capable of being administered and enforced. Development Services and the Bellevue Police Department should collaborate in matters of approval of license applications and renewals and where appropriate, enforcement.
6. The Outcome is in Conformance with Applicable Law. The establishment and operation of recreational marijuana uses must conform with, and not frustrate, the purpose of State law.

¹ These facilities are defined at WAC 314-55-010. The separation distance is measured as the shortest line between the property lines of the proposed recreational marijuana use and the uses listed in the LCB rules. WAC 314-55-050(10).

Recreational marijuana uses must conform to the applicable requirements of Chapter 69.50 RCW and Chapter 314-55 WAC, now or as hereafter amended.

7. Processing of the Amendment is Inclusive. The code amendment process for recreational marijuana uses should seek and include input from a wide range of stakeholders.

In July 2015, Washington State Legislature SB 5052, SB 5121, and 2E2SHB 2136 went into effect. SB 5052 renamed the Liquor Control Board the “Liquor and Cannabis Board” and directed the LCB to develop new regulations providing for alignment of the medical cannabis and recreational marijuana sales industries. SB 5121 established marijuana research license and directed the LCB to establish rules for marijuana research uses. 2E2SHB 2136 authorized jurisdictions to prohibit the siting of medical marijuana cooperatives.

In January 2016, the LCB adopted new draft regulations for public review and comment which, among other provisions, would double the number of retail marijuana outlets in urban areas, including cities such as Bellevue, based upon a report commissioned by the LCB (known as the “BOTEC Report”) for the purposes of estimating the size of the medical cannabis market in the state of Washington. The LCB’s decision to double the number of licenses available for retail establishments in Bellevue has in no manner been correlated to a substantial need for previously unavailable medical marijuana products for residents of Bellevue.

Ordinance No. 6286 (May 9, 2016) implemented an emergency interim zoning control regulating the location of recreational marijuana uses. The interim regulation:

1. Prohibits a recreational marijuana retailer from locating within 100 feet of the single-family and multi-family land use districts (R-1 through R-30); and
2. Allows no more than one marijuana retailer within each of subarea of Bel-Red, Crossroads, Downtown, Eastgate, Wilburton, and Factoria.

Ordinance No. 6296 (June 20, 2016) implemented an emergency interim zoning control regulating medical marijuana cooperatives and marijuana research uses. The interim regulation:

1. Prohibits medical marijuana cooperatives, as authorized under RCW 69.51A.250, now or as hereafter amended, in Bellevue; and
2. Prohibits marijuana research, as authorized under RCW 69.51A.250, now or as hereafter amended, in Bellevue;

State the major conclusions, significant areas of controversy and uncertainty: The City has received comments to date regarding marijuana uses in Bellevue. Comments range from supporting banning marijuana, opposing banning marijuana, the risks associated with marijuana use, and concerns about the locations of recreational marijuana businesses. The major area of concern is the location and availability of marijuana and the potential for increased risk of addiction and concerns related to public health and safety, especially as they relate to children and young adults.

State the issues to be resolved, including the environmental choices to be made among alternative courses of action: Issues to be resolved include development of a Bellevue appropriate approach to the regulation of recreational marijuana uses, medical marijuana cooperatives, and marijuana research uses. Alternative courses of action include: not amending the LUC to limit recreational marijuana retailers and prohibit medical marijuana cooperatives and marijuana research uses, and relying solely on LCB regulations. In terms of environmental impacts, not amending the LUC may result in increased environmental impacts related to waste disposal, energy consumption, and disposal of waste water resulting from increased production and processing for purposes of retail, medical marijuana cooperatives, and marijuana research. By adopting the proposed amendment, recreational marijuana uses are limited and medical marijuana cooperatives and marijuana research uses are prohibited. All marijuana uses must continue to comply with the LCB's rules that include provisions for liquid and solid waste disposal (WAC 314-55-097); limits on soil types, fertilizers, pesticides, and other crop production aids (WAC 314-55-084). All marijuana uses must also comply with applicable City codes, including those intended to protect the environment, including but not limited to the City's Storm and Surface Water Utility Code, Chapter 24.06 BCC; the City's Building and energy codes (Title 23); and the City's nuisance codes (Titles 9 and 9A).

State the impacts of the proposal, including any significant adverse impacts that cannot be mitigated: The proposal is a non-project action to limit the location and quantity of recreational marijuana retailers and prohibit medical marijuana cooperatives and marijuana research uses in Bellevue. There are no significant adverse impacts resulting from that action. The LCB's implementing regulations and the City Code will fill any gaps and adequately mitigate expected environmental impacts. Consequently, no significant adverse environmental impacts are anticipated.

Describe any proposed mitigation measures and their effectiveness: No specific development is being approved with this proposal. No significant environmental impacts have been identified, therefore no mitigation measures, beyond those required in the state rules and the City Code are proposed.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Discharge to water: The proposal further limits the location and quantity of recreational marijuana retailers and prohibits medical marijuana cooperatives and marijuana research uses in Bellevue. Thus, the proposal will not increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise. Indoor cultivation often employs pesticides and herbicides. Hydroponic pollution is also a concern for indoor cultivation. Hydroponic systems use more water and produce more nutrient pollution than other growing methods. According to LCB's consultant, water used for indoor cultivation is high in nitrogen and phosphorous and if disposed in storm drains (which is illegal in Bellevue), it contributes to water body eutrophication and in sewers the water imposes an additional treatment load.

Discharge to air: See response to paragraph 3 below.

Production, storage, or release of toxic or hazardous substances: The proposal further limits the location and quantity of recreational marijuana retailers and prohibits medical marijuana cooperatives and marijuana research uses in Bellevue. Thus, the proposal will not increase production, storage, or release of toxic or hazardous substances. According to LCB's consultant: "Lighting materials used in indoor cannabis cultivation have environmental risks if not properly managed for disposal. High-intensity discharge (HID) bulbs cost about \$5 each to recycle, so they present an incentive for improper (illegal) disposal. Each bulb contains approximately 30 mg of mercury and other toxins. Mercury is a neuro-toxin, and is recognized as extremely toxic, particularly in gaseous form. The Okanogan Cannabis Association estimates that indoor cultivation of cannabis could produce 46,000 HID bulbs each year in Washington (Moberg and Mazzetti 2013)." *Environmental Risks and Opportunities*, Revised Final at 18. The report further states that many other industrial and municipal lighting applications generate used lamps the require management outside the municipal waste stream and that existing recycling/disposal system could serve well for cannabis lighting waste." *Id.*, at 18-19. HID light bulbs and all mercury containing bulbs are now required to be recycled under RCW 70.275.080.

Production of noise: Adoption of the proposed amendment will not result in increased noise.

Proposed measures to avoid or reduce such increases are: Adoption of the proposed amendment will not result in an increase to discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise. Nonetheless, marijuana uses must comply with the LCB's rules that include provisions for liquid and solid waste disposal (WAC 314-55-097); limits on soil types, fertilizers, pesticides, and other crop production aids (WAC 314-55-084). Marijuana uses must also comply with applicable City codes, including those intended to protect the environment, including but not limited to the City's Storm and Surface Water Utility Code, Chapter 24.06 BCC; the City's Building and energy codes (Title 23); and the City's nuisance codes (Titles 9 and 9A)

2. **How would the proposal be likely to affect plants, animals, fish or marine life?** The proposal further limits the location and quantity of recreational marijuana retailers and prohibits medical marijuana cooperatives and marijuana research uses in Bellevue. Thus, this LUCA will not increase the potential impacts to plants and animals.

Proposed measures to protect or conserve plants, animals, fish or marine life are:
N/A

3. **How would the proposal be likely to deplete energy or natural resources?** Growing plants indoors requires energy and water. According to an article in the Seattle Times, studies indicate that growing 2.2 pounds of cannabis indoors produces 4,600 kilograms of carbon dioxide, which is considered a greenhouse gas. *Pot Grows Leave Huge Carbon Footprint*, Seattle Times, May 12, 2013. The Washington State Department of Ecology requires reporting of greenhouse gases when new emissions are expected to average 10,000 metric tons or more of carbon dioxide per year. *Guidance for Ecology Including Greenhouse Gas in SEPA Reviews*, June 3, 2011. According to LCB's

consultant, the Okanogan Cannabis Association estimates that the indoor production of 186 thousand pounds of cannabis, one estimate of state production, would release about 0.4 million metric tons of CO₂ (Moberg and Mazzetti 2013), just under one-half of one percent of the total for the state as of 2008. *Environmental Risks and Opportunities*, Revised Final at 9. The proposal further limits the location and quantity of recreational marijuana retailers and prohibits medical marijuana cooperatives and marijuana research uses in Bellevue. Thus, adoption of the proposed amendment will not increase greenhouse gas emissions.

Proposed measures to project or conserve energy and natural resources are: N/A

4. **How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?** Adoption of the proposed code amendment will not affect environmentally sensitive areas or areas designated or eligible for governmental protection.

Proposed measures to protect such resources or to avoid or reduce impacts are: N/A

5. **How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?** Adoption of the proposed amendment will not affect any shoreline areas.

Proposed measures to avoid or reduce shoreline and land use impacts are: N/A

6. **How would the proposal be likely to increase demands on transportation or public services and utilities?** The proposal further limits the location and quantity of recreational marijuana retailers and prohibits medical marijuana cooperatives and marijuana research uses in Bellevue. Thus, the proposal will not increase demands on transportation or public services and utilities.

Proposed measures to reduce or respond to such demand(s) are: N/A

7. **Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.** The proposal further limits the location and quantity of recreational marijuana retailers and prohibits medical marijuana cooperatives and marijuana research uses in Bellevue. Marijuana is a classified as a Schedule 1 drug under the federal Controlled Substance Act. Under federal law, the production, processing, and dispensing of marijuana is illegal.² On August 29, 2013, however, the United States Department of Justice, Office of the Attorney General, (DOJ) released updated guidance regarding marijuana enforcement. According to DOJ, the guidance was updated in response to state ballot initiatives, such as I-502, which legalize the possession of small amounts of marijuana and regulate the production, processing, and sale of marijuana. The guidance reiterates that DOJ is

² 21 U.S.C. 801 et. seq.

committed to using its investigative and prosecutorial resources to address the most significant threats to public safety related to marijuana crimes in "the most effective, consistent, and rational way." The guidance directs federal prosecutors to review potential marijuana-related charges in cases to determine whether the conduct at issue implicates one or more of the eight stated federal enforcement priorities set forth in the guidance. The DOJ guidance rests on expectations that state and local governments implement a strong and effective regulatory system.

- D. The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.**

Signature 

Date Submitted: 9/17/16